

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOMINIQUE ZAFIR CASEY,
Plaintiff,
v.
HADDAD, et al.,
Defendants.

Case No. 1:21-cv-00855-NODJ-SKO (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS CERTAIN CLAIMS AND
DEFENDANTS**

14-DAY OBJECTION PERIOD

Plaintiff Dominique Zafir Casey is a state prisoner proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983.

I. RELEVANT BACKGROUND

On November 16, 2023, the Court issued its Second Screening Order. (Doc. 25.) The Court found Plaintiff stated a cognizable Eighth Amendment claims against Defendants Agatar, Castillo, Castro, Haddad and Fernandez, but failed to allege any other cognizable claim against any named defendant. (*Id.* at 4-7.) Plaintiff was directed to do one of the following within 21 days: (1) notify the Court he did not wish to file a second amended complaint and instead was willing to proceed only on the Eighth Amendment excessive force claims against Defendants Castillo, Castro and Fernandez, and failure to intervene claims against Defendants Agatar and Haddad, the remaining claims to be dismissed; or (2) file a second amended complaint curing the deficiencies identified in the Court's order, or (3) file a notice of voluntary dismissal. (*Id.* at 7-9.)

1 On December 7, 2023, Plaintiff filed a notice indicating his wish to proceed only on the
2 claim found cognizable by the Court. (*See* Doc. 27.)

3 **II. CONCLUSION AND RECOMMENDATIONS**

4 For the foregoing reasons, the Court **RECOMMENDS** that:

- 5 1. This action **PROCEED** only on Plaintiff's Eighth Amendment excessive force claims
6 against Defendants Castillo, Castro and Fernandez, and failure to intervene claims
7 against Defendants Agatar and Haddad;
8 2. Defendant John Doe be **DISMISSED** from this action; and
9 3. Any remaining claims in Plaintiff's first amended complaint be **DISMISSED**.

10 These Findings and Recommendations will be submitted to the district judge assigned to
11 this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these
12 Findings and Recommendations, a party may file written objections with the Court. The
13 document should be captioned, "Objections to Magistrate Judge's Findings and
14 Recommendations." Failure to file objections within the specified time may result in waiver of
15 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
16 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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18 IT IS SO ORDERED.

19 Dated: December 11, 2023

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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